

REMARKS

This paper is responsive to the final Office Action mailed July 27, 2006, relating to the above-identified patent application. Claims 50, 57 and 62 have been amended. Claims 70-91 have been added. No new matter has been added. Reconsideration and reexamination is respectfully requested.

I. Summary of the Examiner's Objections and Rejections

A. 35 U.S.C. § 101 Rejections

Claims 5, 11, 13-15, 18-22, and 50-69 stand rejected under 35 U.S.C. § 101 because a human was claimed as part of independent claim 50 and because claims 20-22, 56, 58, 63-67 are directed at the use of a system, not dependant features of the system.

B. 35 U.S.C. § 112 Rejections

The Examiner made a series of rejections under 35 U.S.C. § 112 first paragraph arguing that claims 11, 13, and 14 contain new subject matter because no wireless communication means is taught with the reference identifier. The Examiner also made a rejection under 35 U.S.C. § 112, second paragraph, for all claims as indefinite because (a) the parking location accounting system and the geographical region have no antecedent basis, (b) the different identifiers are not disclosed as wireless in claims 11, 13, 14, and 15, (c) claim 20 is indefinite because of a use v. possession dilemma and requires a step, (d) claims 21, 22, 56, 58, and 63-67 also have a use v. possession dilemma and require a step, and (e) claim 62 recites a second wireless communication means.

C. 35 U.S.C. § 103(a) Rejections

Claims 5, 11, 13–15, 18–22, 50–58, and 60–69 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over International Patent Publication No. WO 97/37328 to Ouimet et al. in view of International Patent Publication No. WO 98/04080 to Zeitman. Claim 59 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ouimet et al. in view of Zeitman and in further view of U.S. Patent No. 5,351,187 to Hassett.

D. Traverse

Applicant respectfully traverses and rejects each and every rejection of the Examiner and the respective bases therefor.

II. Applicant's Response to Examiner's Rejections

A. 35 U.S.C. § 101 Rejections

Applicants has removed from the preamble of claim 50 any reference to a person in a payment system. Applicant has modified the claim to provide adequate antecedent basis to the occupant as a user of the communications means when first encountered in the claim. Applicant believes this change is sufficient to overcome this rejection. Accordingly, Applicant requests withdrawal of the rejection by the Examiner.

The Examiner next argues that claims 20–22, 56, 58, 63–67 are nonstatutory under 35 U.S.C. § 101 for reciting a process (method step) while based on a system (product), which therefore fall into several statutory classes. “For the purpose of a 35 U.S.C. § 101 analysis, it is of little relevance whether the claim is directed to a machine or a process.” *AT&T Corp. v. Excel*

Communications, Inc., 172 F.3d 1352, 1357, 50 USPQ2d 1447, 1451 (Fed. Cir. 1999) quoted in MPEP § 2106.IV.B.2. To properly determine whether a claimed invention complies with the statutory invention requirements of 35 U.S.C. § 101, Office personnel should classify each claim into one or more statutory or nonstatutory categories. If a claim falls into a nonstatutory category, that should not preclude complete examination of the application for satisfaction of all other conditions of patentability. MPEP § 2106.IV.B. Both product and process claims have been found to be statutory subject matter and a claim that falls within more than a single category is patentable. It is untrue that a claim can only fall into one statutory class of invention at a time. The Examiner's rejection is therefore improper and should be withdrawn.

Applicant also notes that this rejection, even if made under 35 U.S.C. § 112, second paragraph, is improper. "A claim which makes reference to a preceding claim to define a limitation is an acceptable claim construction which should not necessarily be rejected as improper or confusing under 35 U.S.C. § 112 ¶2." MPEP § 2173.05(f). Finally, the Examiner is incorrect when stating that claims 20–22, 56, 58, and 63–67 recite method steps. They are all proper recitations of functional limitations. For example, claim 67 reads:

The payment system of claim 50 where said wireless ticket issuance device issues and processes a ticket to said vehicle in said parking space.

A functional limitation is an attempt to define something by what it does rather than by what it is. MPEP § 2173.05(g). A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it

fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. MPEP § 2173.05(g). Claim 50 provides basis for a wireless ticket issuance device. Claim 67 further provides that the wireless ticket issuance device, as a functional limitation, issues and processes a ticket. Nothing is improper about this dependant claim and functional limitation. Accordingly, Applicant traverses the objection and believes this objection should also be withdrawn.

B. 35 U.S.C. § 112 ¶ 1 Rejections

The Examiner argues that claims 11, 13, and 14 are improper under 35 U.S.C. § 112 ¶1 because they do not disclose a reference tag (claim 11), a reference tag with a bar code designation (claim 13), and a license plate (claim 14) having wireless communication ability as found in claim 50. Applicant agrees with the Examiner and has accordingly cancelled claims 11, 13, and 14.

C. 35 U.S.C. § 112 ¶ 2 Rejections

The Examiner also rejected all claims as indefinite under 35 U.S.C. § 112, second paragraph, because independent claim 50 has insufficient antecedent basis for the terms “the parking location accounting system” and “the geographical region.” Applicant has amended claim 50 to replace “the parking location accounting system” with the more generic element “the central processing means,” which incorporates the concept of parking location accounting system. Applicant has also given proper antecedent basis to the first occurrence of the term “geographical location.”

Applicant further restates the argument raised in the first section of this response relating to the indefiniteness of claims 20–22, 56, 58, and 63–67, also because of a use v. possession dilemma associated with the requirement of a step. Applicant notes that this rejection, even if made under 35 U.S.C. § 112, second paragraph, is improper. “A claim which makes reference to a preceding claim to define a limitation is an acceptable claim construction which should not necessarily be rejected as improper or confusing under 35 U.S.C. § 112 ¶2.” MPEP § 2173.05(f). Finally, the Examiner is incorrect when stating that claims 20–22, 56, 58, 63–67 recite method steps. They are all proper recitations of functional limitations. For example, claim 67 reads as follows:

The payment system of claim 50 where said wireless ticket issuance device issues and processes a ticket to said vehicle in said parking space.

A functional limitation is an attempt to define something by what it does, rather than by what it is. MPEP § 2173.05(g). A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. MPEP § 2173.05(g). Finally, claim 62 as been amended to remove the confusion associated with a possible claim of additional antecedent basis to the wireless communication means of the reference identifier.

C. 35 U.S.C. § 103(a) Rejections

In the previous Office Action, the Examiner rejected claims 1–49 under 35 U.S.C. § 102(b) as being anticipated by Zeitman and claims 50–69 under 35 U.S.C. § 103(a) as being unpatentable over Ouimet in view of Zeitman. The

Examiner has withdrawn the § 102(b) objection. Applicant argued in his response dated February 10, 2006, that the rejection under § 103(a) was improper since Zeitman and Ouimet do not teach an identifier with a wireless communication means. The Examiner was unconvinced and extended the rejection to all dependant claims.

First, the Examiner has taken “official notice” of the fact that the smart card, shown as element 53 in FIG. 5 of Ouimet (see below), is believed to be the same as what is claimed by Applicant as a “reference identifier.” The smart card of Ouimet is described in the specification as follows: “The vehicle identification data may be stored on a motorist’s smart card or on a magnetic stripe card accepted by the terminal ... electronic payment may be in the form of a credit or debit transaction, or electronic funds recorded on the smart card or the mag stripe card.” Page 6, ll. 6–15.

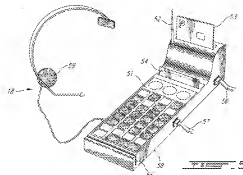


FIG. 5 of Ouimet

The smart card is simply a plastic card that stores information. Unlike what is claimed by the Examiner, the smart card does not communicate data wirelessly and does not have a processor. It must be inserted in a reader and information is obtained by the reader and then processed by another piece of

equipment. In paragraphs [0058] to [0060] of the current specification, Applicant clearly lists the types of reference identifiers considered as possible embodiments. Plastic cards with mag stripes are not a type of wireless reference identifier. The Examiner's official notice is erroneous. What is also missing from Ouimet is the use of a parking meter associated with each parking space as claimed by Applicant. Ouimet teaches away from a device where individual parking meters are used and associated with each parking space.

"Since payment may take place far away from the parking space, it is no longer sufficient for a parking warden to acquire local information from neighboring curbside payment terminals. For these reasons, it is desirable to make large areas, such as entire business districts, into individual parking zones and permit payment of parking from any terminal in the zone, or even from outside the zone." Page 2, ll. 7-14. "... providing a large number of payment terminals provided in the local geographic area each located near a plurality of parking spaces" Page 4, ll. 7-9.

Ouimet is a system for payment terminals, not for individual parking meters associated with parking spaces. Zeitman is also not directed to parking meters, and the Zeitman system has no physical embodiment on the curbside as shown by FIG. 1 of Zeitman. In contrast, Applicant clearly provides the following in claim 50, as amended:

"a parking meter associated with each parking space including a wireless means to transmit, receive and process information; said parking meter facilitating communication with said communications means, said wireless ticket issuance device, and said reference identifier, said parking meter being programmed with a processing means to credit said central processing means with payment received by said reference identifier wireless communications means."

The Examiner's belief that the plastic card of Ouimet can somehow wirelessly transmit information to a nonexistent parking meter is incorrect. Applicant believes this rejection is improper and should be withdrawn.

Applicant is perplexed at the Examiner's citation of unrelated art that may seem appropriate at a glance. Applicant is also puzzled at the general misunderstanding of the elements of the claims of the prior art, for example how a system without parking meters, having only parking terminals, can be viewed as related to a system with parking meters, and how a plastic card can be construed as a wireless communication identifier system. In an attempt to remedy to this situation, Applicant has placed the claims in what is believed to be a condition of allowance but also proposes a set of new claims, numbered 70 to 91, that substantially restate the claimed subject matter initially filed with this application but presented to the Examiner in a new configuration closer to the claim structure of Zeitman and Ouimet. These new claims are centered around the central processing means and introduce no new matter.

Applicant believes the invention is novel, understands the efforts of the Examiner to place the claims in condition for allowance, and thanks the Examiner for any efforts to suggest claim amendments for any or all of these claims that will place the claims in condition for allowance.

III. Conclusion

Based on the above amendments and remarks, Applicant submits that claims 5, 18-22, 50-91 of this application are now in proper condition for allowance, and such action is earnestly solicited. Applicant filed and paid for

69 original claims. The current amendment includes 33 cancelled claims (1-4, 6-17, and 23-49) and 22 new claims (70-91). Because the total number of pending claims as amended falls below the number of original claims, no additional fees for the new claims are required. The Commissioner is hereby authorized to charge any underpayment or credit any overpayment to Deposit Account No. 22-0259 or any payment in connection with this communication, including any fees for extension of time, which may be required. The Examiner is also invited to call the undersigned if such action might expedite the prosecution of this application.

Dated: 9/26/06

Vedder, Price, Kaufman & Kammholz
222 North LaSalle Street, Suite 2600
Chicago, Illinois 60601-1003
(312) 609-7716

Respectfully submitted,

By: Michael J. Furgon
Michael J. Furgon
Reg. No. 39,404